

## EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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IN RE MICROSOFT CORP.  
ANTITRUST LITIGATION.

MDL Docket No. 1332

This Document relates to:

Hon. J. Frederick Motz

*Burst.com, Inc. v.  
Microsoft Corp.,*

**UNDER SEAL**

Civil Action No JFM-02-cv-2952

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**BURST'S REPLY TO MICROSOFT'S OPPOSITION TO BURST.COM, INC.'S  
MOTION FOR ADDITIONAL TIME TO DEPOSE WILLIAM H. GATES, III**

In brief reply:

(a)

Microsoft overlooks Mr. Gates' singular role in running Microsoft and charting its direction. Mr. Gates personally handled Microsoft's relationship with Intel, including pressuring Intel to drop JMF and the Oracle network computer. He personally set the company's strategy as to extending the OS monopoly and into multimedia playback and delivery. See below § (c). And he personally directed Microsoft's moves in its chess game with RealNetworks, even moving some of the pieces himself.

Mr. Gates is, in short, a critically important witness. He is also a witness that Microsoft will refuse to produce at trial.<sup>1</sup> If, however, this is incorrect, and Microsoft will represent to this Court that it will make Mr. Gates available in Burst's case-in-chief, Burst will withdraw this

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<sup>1</sup> Mr. Gates resides beyond the subpoena power.

motion. If not, a fair balance of the competing interests calls for a short additional time with Mr. Gates.

(b)

No witness has an obligation to help the opposing party. Some dancing at deposition is a given, even required of a smart witness. And it is the questioning counsel's job to ask, and ask again, until the answer is clear (or it is clear that there will be no real answer).

But this takes time. What should have been one and a half hour Intel examination took nearly three hours. Normally, this would not be a problem: the lawyer would just out-wait the witness. But not with a three hour clock running.

(c)

Should Burst secure two more hours with Mr. Gates, Burst will examine Mr. Gates on two additional subjects: (1) Microsoft's relationship with RealNetworks; and, (2) Microsoft's Corona technology, and an e-mail about Corona and Burst sent directly to Mr. Gates.

On the first subject, Mr. Gates attended an important meeting in 1997 and set forth a strategy to make Microsoft media platform the standard in the multimedia business. As part of this strategy, Microsoft entered into several agreements with RealNetworks in 1997. These agreements were designed to stop RealNetworks from competing in the core client streaming software space. Although RealNetworks ultimately refused to honor their terms, the events nonetheless provide important evidence in Burst's attempt to monopolize case. We attach as Exhibit 1 several of the documents establishing Mr. Gates' direct involvement in these matters.

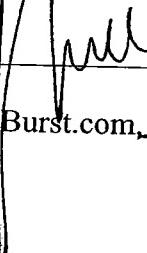
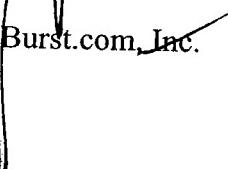
The final topic relates to Burst and Microsoft's Corona, fast-streaming technologies. Mr. Gates personally introduced Corona, and asked before his presentation that he be educated on Corona's "fast-streaming" features. In response to his request, Microsoft media executives Will

Poole and Mike Beckerman, received a detailed e-mail about Microsoft's relationship with Burst. See Exhibit 2 (e-mail to Mr. Gates). Burst should be permitted to explore the details of these communications and the role of fast-streaming in Microsoft's efforts to promote its digital media products.

DATED: September 27, 2004

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**PROOF OF SERVICE**

I am employed in the State of California, County of San Francisco. I am over 18 years of age and am not party to the within action. My business address is One Market, Spear Tower, Suite 2200, San Francisco, California 94105.

On September 27, 2004, I served BURST'S REPLY TO MICROSOFT'S OPPOSITION TO BURST.COM, INC.'S MOTION FOR ADDITIONAL TIME TO DEPOSE WILLIAM H. GATES, III upon counsel named below as indicated:

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Executed this 27<sup>th</sup> day of September, 2004.

  
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Jerry Shaw

Exhibits 1-2  
Filed manually  
(voluminous)